

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

UNITED STATES

Case Nos. 04-CR-40002-NMG

2004 JUN -7 P 2:44

U.S. DISTRICT COURT
DISTRICT OF MASS.

v.

JOSEPH DIFLUMERA

GOVERNMENT'S MOTION UNDER §3E1.1(b) OF THE
UNITED STATES SENTENCING GUIDELINES

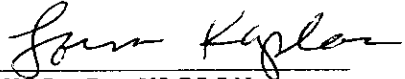
The United States of America, by and through its attorney, the United States Attorney for the District of Massachusetts, hereby respectfully files this Motion pursuant to §3E1.1(b) of the U.S. Sentencing Guidelines ("USSG"). Pursuant to USSG §3E1.1(b), as modified on April 30, 2003 by section 401(g) of the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 ("PROTECT Act"), Pub. L. No. 108-21, §401, 117 Stat. 650, 671-72 (Apr. 30, 2003), the government states that the defendant, Joseph DiFlumera ("DiFlumera"), has assisted authorities in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. In this case, DiFlumera entered into a plea agreement with the government prior to the filing of charges. Accordingly, the government respectfully requests that the Court grant a three-level

reduction to DiFlumera under USSG §3E1.1 for his acceptance of responsibility, as outlined in the plea agreement in this case.

Respectfully submitted,

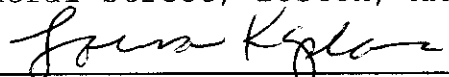
MICHAEL J. SULLIVAN
United States Attorney

By:


LAURA J. KAPLAN
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Laura J. Kaplan, do hereby certify that I served a copy of the foregoing pleading by regular mail on June 7, 2004 on counsel for defendant Joseph DiFlumera, Paul V. Kelly, Esq., Kelly, Libby & Hoopes, PC, 175 Federal Street, Boston, MA 02110.


Laura J. Kaplan
Assistant U.S. Attorney

AFFIDAVIT OF ARTHUR P. DIGERONIMO, JR.

I, Arthur P. DiGeronimo, Jr., being duly sworn, hereby depose and state as follows:


1. I am the President of Victory Distributors, Inc., a chain of supermarket stores located throughout Massachusetts. I have known the defendant, Joseph DiFlumera, since 1989. I understood the defendant to be an official for the United Food and Commercial Workers ("UFCW") until his retirement in 1996. However, I understood that even after he had retired, the defendant had a continuing relationship with the UFCW.

2. Since 1989, the defendant has demanded from Victory that certain monies be paid to him to ensure that the UFCW and Local 1445 would not attempt to organize Victory's stores. On numerous occasions over the years, the defendant made clear to me by his words that Victory would suffer economic devastation if these monies were not paid to the defendant. Over the years, I occasionally advised the defendant that Victory would no longer pay him these monies but the defendant would become angry and threaten to cause serious adverse consequences to Victory. Indeed, on August 26, 2003, during a consensually recorded telephone conversation, I told the defendant that I would not be able to pay the \$10,000 alleged "consulting fee" for the month of September. The defendant told me to "pay it or else." The defendant then related a story to me about another supermarket who had refused to "come under the umbrella" and was presently in

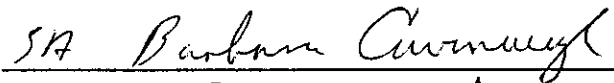
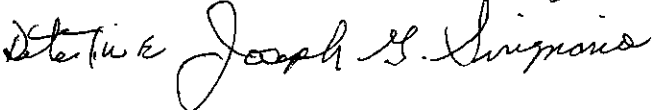
the process of being organized by the UFCW.

3. In addition, based on the defendant's angry tone of voice and information I had received from other individuals about the defendant, I feared that harm would come to me or Victory if I did not make these payments. For this reason, and because I feared labor unrest and serious economic harm, I reluctantly paid the defendant the monies he demanded.

I declare that the foregoing is true and correct to the best of my knowledge and belief.


ARTHUR DIGERONIMO, JR.

Subscribed and sworn to
before me this 21 day of
April, 2004

AFFIDAVIT OF ANTHONY MIGLIARO

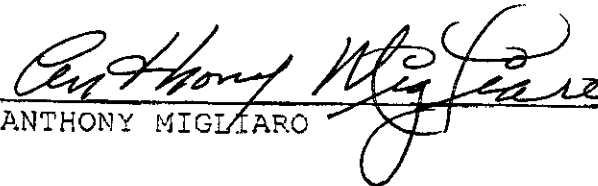
I, Anthony Migliaro, being duly sworn, hereby depose and state as follows:

1. In 1985, I was a Vice President and General Manager of Victory Distributors, Inc., a chain of supermarket stores located throughout Massachusetts. I have known the defendant, Joseph DiFlumera, since 1989. I understood the defendant to be an official for the United Food and Commercial Workers ("UFCW") until his retirement in 1996. However, I understood that even after he had retired, the defendant had a continuing relationship with the UFCW.

2. I first met the defendant in the late 1980's after being introduced to him by a wholesaler. The defendant indicated that if certain monies were paid to him he would ensure that the UFCW and Local 1445 would not attempt to organize Victory's stores. At our very first meeting, the defendant requested that Victory pay him \$2500 per store to come under his "umbrella protection" and further stated that there would be labor problems if Victory failed to make these payments. I felt intimidated by the defendant and understood his statement that there would be labor problems if Victory did not pay to mean that Victory would suffer labor problems, or property damage, or that bodily harm might come to my family or myself if we did not pay him the monies.

3. I retired from victory in March 2002. From the late 1980's through the time I retired, Victory continued to make payments to the defendant. I know that because I am the principal person who delivered the monies to the defendant. Throughout my relationship with the defendant, I feared for Victory as well as for the safety of myself and my family if we did not comply with the defendant's requests for payments.

I declare that the foregoing is true and correct to the best of my knowledge and belief.


ANTHONY MIGLIARO

Subscribed and sworn to
before me this ____ day of
April, 2004

CERTIFICATE
STATE OF FLORIDA
COUNTY OF Lee
I, the undersigned authority, hereby certify
that the foregoing is a true and correct copy
of the instrument presented to me by
Anthony Migliaro
as the original of such instrument **WITNESS**
my hand and official seal, this 23 day
of April AD. 2004
Cecile Mosher
NOTARY PUBLIC

CERTIFICATE
STATE OF FLORIDA
COUNTY OF _____
I, the undersigned authority, hereby certify
that the foregoing is a true and correct copy
of the instrument presented to me by

as the original of such instrument **WITNESS**
my hand and official seal, this ____ day
of _____ AD. 20_____
NOTARY PUBLIC

